

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

This office applies section 552.108(a)(1) when a requested offense report pertains to an ongoing investigation or prosecution. A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication.

In this case, the city has provided this office conflicting information so that we are unable to conclude that section 552.108 is applicable in this instance. The report at issue states that the case is closed. However, you state that "the case investigation is ongoing." You also state that the "attached documents deal with criminal activity that did not result in conviction or deferred adjudication." It is not clear to this office, nor have you explained, how or if the investigation actually concluded in light of the fact that you state the investigation is ongoing. We cannot reconcile this apparent conflict. A governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). Consequently, the city may not withhold the information from the requestor based on section 552.108 of the Government Code.

This office has interpreted section 552.108(a)(2) to apply to information that relates to a criminal investigation or prosecution that concluded in a result other than a conviction or deferred adjudication. Thus, if the information relates to a pending case, that is, a case which has had no result, section 552.108(a)(2) cannot apply because a pending case has not concluded. In contrast, this office has interpreted section 552.108(a)(1) to apply to, among other things, information that relates to a pending criminal investigation or prosecution because the release of information that relates to a pending case is presumed to interfere with the investigation and prosecution of the case. Consequently, in the usual case, subsections (a)(1) and (a)(2) cannot simultaneously apply to information relating to the same case. Thus, to argue that both subsections apply to requested information by stating that the relevant case is pending and also stating that the case did not result in a conviction or deferred adjudication is to present conflicting information about the status of the case. In order to determine the applicability of section 552.108, this office requires accurate, current information about the status of the case to which requested information relates.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 113549

Enclosures: Submitted documents

cc: Ms. Karen J. Schaeffer
2701 Parker Lane, # E-1
McAllen, Texas 78503
(w/o enclosures)